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CURRENT TOPICS

New Judges

WITH the appointment of two new judges of the High Court the changes occasioned by LORD GODDARD'S retirement are presumably now completed. The new judges are Mr. GERALD ALFRED THESIGER, Q.C., and Mr. JOSEPH BUSHBY HEWSON, Q.C. Mr. Justice Thesiger has been assigned to the Queen's Bench Division and Mr. Justice Hewson to the Probate, Divorce and Admiralty Division. We congratulate them both on their new office and wish them well in it.

Sound Sense

WE are all so used to being castigated in newspapers and cast as the villains in television serials that it comes as a sweet surprise to read an article in the October *Reader's Digest* in which the author admits not only that we have some virtues but that we are often positively useful. The article is called " Take Care—When You Buy a House " and its keynote is in the fourth paragraph which runs : ." The two important rules in buying a house are (1) get a good solicitor who is experienced in property transactions, *before* you start to look for a house ; (2) be guided by his advice and don't sign anything—contract, agreement, purchase offer—until he tells you to." The author, Mr. JOHN ANSTEY, follows this with an excellent essay, adorned with frightening illustrations, on *caveat emptor*, and finishes with a warning against relying entirely on a survey made for a building society : " . . . their agreement to help finance the purchase does not necessarily mean that the house is in perfect repair. Their survey is for their own purpose—even though the buyer pays the surveying fee." Sage also is the advice always to " get written estimates for any work you are having done—whether by solicitor, surveyor, decorator or builder." Many people, perhaps the majority, who are contemplating house purchase are working on a tight budget ; often they are embarrassed about asking how much the legal costs will be ; certainly very few, if any, mind in the least if their solicitor volunteers the information. We have one final reflection about this article : anyone can understand it, but we wonder how many clients who are given the same information by their solicitors can follow it as easily. Most solicitors fight a constant battle against assuming that we are always coherent to laymen, however much we may understand each other. At the annual conference of the Library Association, held at the same time in Brighton as our own conference in Eastbourne, Dr. JOSEPH TRENAMAN told the delegates that *Reader's Digest* " is seen by one-fifth of the adult population and that its readers show a marked superiority in all other cultural activities over the other four-fifths." We look forward to a huge surge of cultured intending purchasers and mortgagees into our offices.

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Lawyers out of Court

THE last legal event at the annual conference of The Law Society at Eastbourne before the days were given up to golf and joyrides was an address by VISCOUNT MONCKTON OF BRENCHLEY about lawyers who forsake the law and seek their fortunes elsewhere. It was hardly surprising that most of Lord Monckton's subjects were in politics (either as statesmen or as politicians), but we were disappointed that his natural charity inhibited him from painting in too many warts. He conceded that lawyers do not necessarily make successful politicians, to which Mr. PEPPIATT riposted with spirit that neither, as classes, do chartered accountants, pork butchers or embalmers. The truth is that it is very difficult indeed to be a really successful politician, which makes it all the more surprising that there should be so many aspirants. It would be better for the reputations of many lawyer-politicians if they had stuck to the law; few would claim that, for example, Viscount Simon's claims to immortality were enhanced by his political work or that the first Viscount Hailsham added one cubit to his stature by engaging in politics. On the other hand, the reverse is true of Lloyd George, one of the few solicitors who were admitted to Lord Monckton's gallery: curiously enough, we do not think he mentioned the first Viscount Brentford.

What Have We Got?

WHAT many of us were hoping for—and here again we were disappointed—was an explanation with examples from his personal experience of why it is better for the chairman of a bank to be a man like LORD MONCKTON instead of a man who has spend his life being a banker. Lord Monckton listed some of the qualities which a lawyer brings to work outside the law—an attitude of detachment, experience in holding the balance between zeal for his client and reality, working under the shadow of a deadline, lucidity, simplicity, persuasiveness, and the ability to find common ground to narrow the field of conflict and to explore the possibilities of compromise once he is freed from his duties to a client. This is true as far as it goes, although we confess that it gives an idealistic picture of the qualities of lawyers as a class; there is no record, for example, that narrowing the field of conflict was among the abilities of Carson or Lloyd George. With characteristic fairness, Lord Monckton also enumerated the deficiencies of lawyers for outside activities—the suspicion of being legalistic, pettifogging, fluent, too confident in logical perfection. In addition he suggested that we are not creative thinkers. One of the difficult questions to answer is whether any of the lawyers who achieve eminence outside the law owe any of their success to their legal training. We think that Lloyd George would probably have become Prime Minister even if he had not first been a solicitor, but would he have been so successful if he had not had an early legal training, especially in advocacy? Similarly, Sir Kingsley Wood, even if he had been a chartered accountant, would still have been in the running for the highest offices in the land. We would like Lord Monckton's address to have begun where it ended. There is a general belief that the Thursday morning session should not be profound but we think that a place might be found during the conference for an address of a more weighty character than those to which we are accustomed. It is tantalising to hear the question posed but to be deprived of the answer.

Trustee Investments: Loans to Local Authorities

READERS may like to be reminded of the extension of trustees' statutory powers of investment which is contained in s. 54 of the Local Government Act, 1958. That section provides that the manner in which a trustee may invest trust funds under the powers of the Trustee Act, 1925, s. 1, shall include the lending of money to, or the purchase of securities created by, local authorities and certain other statutory bodies, provided that the money borrowed is charged on all or any of the revenues of the authority or on a fund into which all or any of their revenues are payable. "Local authority" is widely defined to include county councils, county borough and county district councils, the Common Council of the City of London, metropolitan borough councils, the council of any borough included in a rural district, parish councils, any bodies all the members of which are members of local authorities, local authorities within the meaning of the Local Government (Scotland) Act, 1947, the Council of the Isles of Scilly, and, in Northern Ireland, councils of counties, county or other boroughs, or of urban or rural districts. Other authorities whose borrowings are covered by the section are river boards, river purification boards, the Metropolitan Water Board, the Belfast City and District Water Commissioners, the Conservators of the River Thames and the Lee Conservancy Catchment Board. Except for the London County Council and the Metropolitan Water Board, however, the Trustee Act, 1925, s. 2 (1), proviso, will apply as to redeemable stock.

Advice to Students

NOT only those about to go to university but also graduates whose examination days are far behind them may have been surprised to read Professor H. L. ELVIN's advice to a group of young people about to enter a university for the first time. He is reported to have told them to "cut as many lectures as possible" in view of the "terrible danger that you will go to as many as possible and believe that you've been working." He freely admitted that lectures are advantageous if matter not found in text-books is passed on to students and the lecturer is able to bring the subject to life in a quite unusual way, but if the lecturer gives only what may be found in the books which the student should read for himself, in the opinion of Professor Elvin, who is the director designate of the Institution of Education in the University of London, those lectures should be avoided. He believes that too many students go to lectures for the purpose of evading "hard personal reading." Many students may also have been pleasantly surprised by Professor Elvin's contention that if they work for ten hours a day they will probably get a third, if they work for six hours, a second, but if they work for four hours they stand a good chance of getting a first. In making this suggestion he is in good company. Many years ago John Locke formed a similar view and said that "the great art of learning is to undertake but little at a time." However, whatever form "work" may take and for whatever time it may last, we doubt whether the majority of students in the faculty of laws will act upon Professor Elvin's advice and rely on their own reading of text-books and law reports for the purpose of passing their examinations. The wisdom of his advice cannot be questioned but we wonder how many law students will be wise enough to arrange and conduct their studies in accordance with it.

ENFORCEMENT NOTICES—SUGGESTIONS FOR REFORM

Now that the Town and Country Planning Act, 1947, has been in operation for over ten years it seems to be appropriate to examine the practical working of some of its provisions. A complete study of the whole Act is, however, beyond our purpose, as it is proposed only to pick out those provisions of the Act which have proved to give rise to most practical difficulties. For a few years after 1948 the complaints of the public about the new and ubiquitous form of control introduced by the Act were concentrated into a criticism of development charges—the method used by the Act to recoup the benefits of "betterment" from individuals, for the good of the State. These charges were, however, abolished in November, 1952 (Town and Country Planning Act, 1953, s. 1). Since 1952, there is no doubt but that the provisions of the 1947 Act most disliked and most generally considered to be in need of recasting are those dealing with enforcement[1]; those sections whereby local planning authorities are given machinery enabling them to enforce compliance with "planning control." The case law that has rapidly been forming in recent years round ss. 23 and 24 of the 1947 Act is rapidly attaining alarming proportions; in time these two sections will rival in notoriety and litigation even the Workmen's Compensation Acts of unsanctified memory.

This continuous litigation—most of it on highly technical points—contributes to the attitude apparent in certain quarters of defiance of the law (such as was in evidence in *A.-G.* v. *Bastow* [1957] 1 Q.B. 514 and *A.-G.* v. *Smith* [1958] 3 W.L.R. 81; *ante*, p. 490), and on the other hand to weakness and over-caution on the part of local planning authorities in using their enforcement powers, out of a natural desire to avoid becoming enmeshed in an expensive tangle of complicated litigation. The procedure—even where the statutory provisions are clear—is extremely slow. Thus, a person served with an enforcement notice must be allowed a period of at least twenty-eight days within which to apply for planning permission or appeal to the court, and then a further (unspecified but reasonable) period (*Burgess* v. *Jarvis and Sevenoaks R.D.C.* [1952] 2 Q.B. 41) must be allowed before the notice will become effective. If an application for permission is in fact made, further delay may result if the applicant decides to appeal against an unfavourable decision to the Minister. So ill does Mr. R. E. Megarry, Q.C., think of these provisions that he has recently described the procedure of serving an enforcement notice as a *brutum fulmen*, "a puny, slow and often relatively expensive weapon" (73 L.Q.R. 506).

It may be useful, before attempting any suggestions for improvement of the law, to undertake an appraisal of the reasons for and the nature of the bulk of the litigation on enforcement notices and enforcement procedure generally. The decided cases have all been concerned with legal points—the facts are rarely in dispute—and planning policy is not normally in issue. The kinds of points that have had to be decided have included the nature of the matters that can be raised in proceedings under s. 24 (3) (see, e.g., *Francis* v. *Yiewsley and West Drayton U.D.C.* [1957] 2 Q.B. 136), when can a declaration be granted as to the parties' rights in such cases (*Pyx Granite Co.* v. *Ministry of Housing and Local Government* [1958] 2 W.L.R. 371), what order may be made by the magistrates on an appeal under s. 23 (3) (see, e.g., *East Riding C.C.* v. *Park Estate* (*Bridlington*) [1956] 3 W.L.R. 312), the legal effect on enforcement procedure of a determination under s. 17 of the 1947 Act (*Pyx Granite* case, *supra*), how should an enforcement notice be drafted (see, e.g., *Keats* v. *L.C.C.* [1954] 1 W.L.R. 1357, or *Francis* v. *Yiewsley and West Drayton U.D.C.*, *supra*), etc. When planning policy is raised in such litigation, such as questions whether a developer may be permitted to erect a model village on his land (as in *Buckingham C.C.* v. *Callingham* [1952] 2 Q.B. 515), or to use the land for the erection of caravans, the answer has usually turned on such legal considerations as whether his proposal amounts to development, or whether, by reason of the past "history" of the site, it is legally necessary or not to obtain express planning permission (see 1947 Act, s. 23 (1) (*a*)).

The reason for much of the litigation that arises on these sections of the 1947 Act is partly the natural reaction of landowners fretting under a degree of State interference with their "rights" of ownership which may at times seem to deny them any liberty at all to deal with their own land in their own way. When this attitude to a piece of legislation is given encouragement by obscure drafting, it is scarcely surprising that "persons aggrieved" seek to obtain redress from the courts for what often seem to them to be "wrongs."

This leads us to the real basic flaw in these provisions, not so much that there is inadequate means of appeal to the courts, but that there are too many and too varied means of initiating litigation on legal points. There may be an appeal to the local magistrates under s. 23 (3); if the local planning authority act in default under s. 24 (1), the landowner may take proceedings in trespass if the authority's powers are exceeded, or he may resist proceedings taken to recover the authority's expenses; the recipient of a notice may resist proceedings brought against him under s. 24 (3), and may (apparently) at any time take proceedings for a declaration as to his legal rights. On questions of "pure policy," however, no express provision is made for any recourse to the courts of law. (As to the remedy by way of certiorari, see below.)

It is within this context of an *embarras de richesse*, it is submitted, that these provisions should be examined with a view to improvement. One simple means of approach to the courts—and normally only one—should be available to the "person aggrieved" by the receipt of an enforcement notice, and on any legal question any intending developer should be able to obtain the ruling of the courts, and not have to be content with a determination from the Minister.

It is therefore suggested that consideration should be given to the law being amended on the following lines.

(*a*) Change of use

In the case of development which consists of a change of use only there is no need to provide for an appeal against an enforcement notice to the magistrates (see s. 23 (3)). All that the recipient of the notice need do, if he considers he has reason to challenge the validity of the notice, is to await proceedings being taken against him under s. 24 (3) by the local planning authority, which they must commence (if at all) within six months (Magistrates' Courts Act, 1952, s. 104). It should be made clear in the statute that in such proceedings under s. 24 (3) the defendant will be entitled to raise any question of law, and that no defence will be closed to him by reason of his not having pursued any other remedy; he may question the wording of the notice, impeach its service, allege

[1] The problem of assessment of compensation in cases of compulsory acquisition of land, on which H.M. Government has indicated that new legislation is in contemplation, raises wider issues that are beyond the scope of this article.

it is out of time, or that no planning permission was necessary in the circumstances of the case, etc. Proceedings in the High Court for a declaration (R.S.C., ord. 25, r. 5) are at present resorted to only because the magistrates (under s. 23 (3) or s. 24 (3)) may not, for technical reasons, be able to decide the particular legal point at issue, and if this amendment were effected such proceedings in the High Court would no longer be necessary. In order to avoid doubts, however, it may be preferable formally to abolish this High Court jurisdiction so far as enforcement proceedings are concerned.

(b) Building, mining or engineering operations

In the case of development which consists wholly or partly of building, mining or engineering operations (see definition of " development " in s. 119 (1) of the 1947 Act) it would clearly be unjust to deprive the recipient of an enforcement notice of his right to appeal to the courts against such a notice, for in such a case the local planning authority are not empowered to prosecute the defaulter for failing to comply with the notice, but they may exercise the somewhat more drastic remedy of entering on the land and taking the steps, such as demolishing a building erected without planning permission, which had been required to be executed by the enforcement notice. Technically, no doubt, the offender could be left to his common-law remedy of self-help, of resisting unlawful entry on his land and taking proceedings in trespass[2], but this is not very satisfactory. The appeal to the magistrates under s. 23 (3) should be allowed to remain in this case, but it is suggested that their jurisdiction should be widened considerably[3]; they should be enabled to make such order as they may consider just on any question of law raised in the appeal. On the other hand they should not be permitted to go to the other extreme and constitute themselves a court of appeal from the local planning authority on the " planning " merits of the matters in issue. Appeals from the decision of the magistrates should, it is suggested, be limited to appeals by case stated; appeals by way of rehearing before quarter sessions should not prove necessary, in view of the limitation to points of law. The suggestion made elsewhere that appeals (generally) should be allowed against the decisions of the Divisional Court might well be examined in this context. Proceedings by way of certiorari against the magistrates would not be affected.

(c) Breach of condition

Where the enforcement notice is concerned with the breach of a condition in a planning permission (relating either to some use of the land or to the carrying out of any operations thereon), the same provisions as those suggested in the case of a change of use (heading (*a*), above) should be applied. The local planning authority have no direct default powers, and again the recipient of a notice may be left to defend any proceedings brought against him under s. 24 (3).

(d) Application for permission after service of notice

The further question arises, whether the procedure at present open to the recipient of an enforcement notice, whereby he can at that late stage apply for planning permission, is really necessary and should be allowed to remain. This is in practice one of the main causes of delay in enforcement procedure and it is suggested that in cases where an application for permission in respect of the contravening development has already been made and refused by the planning authority, the right to make a further application for planning permission is quite unnecessary and should be abolished. In other cases, where the enforcement notice is served in respect of development (consisting either of a change of use or of building, etc., operations) which has taken place without any application for permission having been made within a period of (say) twelve months, it is suggested that the notice should have the effect of a challenge which would not become effective if an application for permission were submitted within twenty-eight days; when any such application had been finally disposed of, a fresh enforcement notice would then have to be served.

(e) Appeals on points of law

Appeals to the courts from the decisions of the planning authority (or the Minister) on planning grounds clearly could not be recommended but points of law often arise in connection with such decisions. For instance, conditions as to the surrender of land for the improvement of sight lines, or for the construction of lay-bys or for road widening (see, e.g., article by Mr. Heap, " Planning Conditions and Service Roads," at [1956] J.P.L. 164), or conditions limiting the time within which a particular planning permission may be implemented, and questions as to what matters are included in the phrase " any other material considerations," as used in s. 14 (1) of the 1947 Act (see article by the present writer at [1952] J.P.L. 557), give rise to legal considerations which may be of considerable importance to the developer. The courts have not had an opportunity—so far—of ruling on such matters, but quite a volume of *jurisprudence* (in the Continental sense) has been formulated in decisions of the Minister, as published in the Bulletins of Selected Appeal Decisions (published by H.M.S.O.). Hitherto it has not been certain that the decisions of the Minister under s. 15 or s. 16 of the 1947 Act are subject to review by certiorari, but it seems that the position in that regard is now clear.

Certiorari will lie to any inferior tribunal to quash (but not to amend: *R.* v. *Industrial Disputes Tribunal; ex parte Kigass* [1953] 1 W.L.R. 411) an error of law appearing on the face of the record (*R.* v. *Northumberland Compensation Appeal Tribunal; ex parte Shaw* [1952] 1 K.B. 338). The changes recently made in the procedure regulating inquiries leading up to a decision under s. 15 or s. 16 (see circulars 9/58 and, more recently 51/58, dealing with similar matters in connection with development plans), whereby the substance of the inspector's report will be made available to persons concerned, and reasons will be given for the decision, should put it beyond doubt that certiorari will lie where an error of law is made in the reasons given for the decision; this is now further reinforced by s. 12 of the Tribunals and Inquiries Act, 1958, making the giving of reasons for decisions mandatory, and also incorporating the document giving such reasons as part of the " record." Certiorari is not, however, an ideal remedy; it cannot be used to correct a minor fault (as mentioned above), or the error in law of which the " person aggrieved " wishes to complain may not form part of the record (see, e.g., *Davies* v. *Price* [1958] 1 W.L.R. 434; *ante*, p. 290). It would seem preferable therefore that provision should be made for an appeal by way of case stated on a point of law to lie to the Court of Appeal from the decisions of the Minister—similar to the jurisdiction under s. 3 of the Lands Tribunal Act, 1949, which has worked well in practice.

[2] If entry is made under the purported authority of an illegal enforcement notice, the illegality will relate back to the entry, which will then be deemed to have been unlawful (*The Six Carpenters Case* (1610), 1 Sm. L.C. (13th ed.) 134).

[3] At present their jurisdiction is extremely restricted; in any case other than those listed in s. 23 (*a*) or (*b*) they " shall dismiss the appeal " (see, e.g., the case at quarter sessions of *Stamp* v. *Bognor Regis U.D.C.* [1949] J.P.L. 644).

(f) Application to determine whether permission required

The procedure under s. 17 of the 1947 Act, whereby an applicant may obtain a determination from the local planning authority (or, on appeal, from the Minister) whether or not a particular change of use or building, etc., operations amount to development for which express planning permission is required, is far from satisfactory. Firstly, it seems unreasonable that the local planning authority should be required to answer such questions—they are not equipped to answer legal conundrums, and they appear at their best where they have to solve problems of planning policy. Secondly, it is by no means clear how "final" is a determination under s. 17; it seems that a Minister's determination under the section may be disregarded in proceedings brought under s. 23 (3) or s. 24 (3), but that in other matters the determination is to be regarded as "final" (see article by Mr. Wellings, discussing the *Pyx Granite* case, *supra*, at [1958] J.P.L. 556). Certiorari is not shut out by the wording of s. 17 or the other sections incorporated therewith (Tribunals and Inquiries Act, 1958, s. 11), but again it may be desirable to provide for an appeal by way of case stated on a point of law to the Court of Appeal. It should also be provided that applications under the section should be made to the Minister direct in the first instance.

(g) Period for compliance

Enforcement notices have been described as highly technical documents, and so indeed they are, and the law has been criticised on this ground alone. Most of the points that can arise have, however, by now been settled, and it is thought that no amendments to the law on this score are really necessary.[4] Thought might well be given, however, to the question whether it is really essential to provide for a further period within which the requirements of the notice must be complied with, after the end of the time on the expiration of which the notice takes effect (the result of the decision in *Burgess* v. *Jarvis and Sevenoaks R.D.C., supra*).

(h) Control of advertisements; tree preservation orders

If the amendments suggested above were implemented similar alterations would be required in the Control of Advertisements Regulations, 1948–51. The opportunity might also be taken to make it clear that the enforcement provisions of ss. 23 and 24 (as they are to be amended, it is hoped!) may be applied to tree preservation orders.[5]

J. F. GARNER

[4] The difficulties caused by period consents given in the General Development Order, without any provision being made for compliance with control on the expiration of the period, discussed at [1958] J.P.L. 154 *et seq.*, could be resolved by Ministerial regulation.

[5] Contrast the provisions of s. 28 (1) of the 1947 Act with those of s. 29 (2) (building preservation orders).

The Practitioner's Dictionary

HEREDITAMENT

IN the recent case of *Holland* v. *Ong* [1958] 2 W.L.R. 448; *ante*, p. 176, Hodson, L.J., observed that "'hereditament' is a very wide word."

The widest possible meaning of "hereditament" was applied by Wilde, C.J., in *Lloyd* v. *Jones* (1848), 17 L.J.C.P. 206, where the court was asked to interpret s. 58 of the Small Debts Act, 1846, in so far as that section provided that the county court should not have jurisdiction in any action "in which the title to any corporeal or incorporeal hereditaments" was in question. His lordship relied upon the teaching of authoritative text-books, e.g., Termes de la Ley, 388 (with which the definition contained in s. 205 (1) (ix) of the Law of Property Act, 1925, should be compared), and found that "hereditament" signifies "all such things, whether corporeal or incorporeal, which a man may have to him and his heirs, by way of inheritance, and which, if they be not otherwise bequeathed, come to him who is next of blood, and not to executors or administrators, as chattels do." Similarly, in Sheppard's Touchstone it is said that "the word 'hereditament' is of as large extent as any word, for whatsoever may be inherited, be it corporeal or incorporeal, real, personal or mixed is a hereditament."

In view of this, in relation to wills, it is not surprising that in *Prescott* v. *Barker* (1874), L.R. 9 Ch. 174, Lord Selbourne, C., conceived that "hereditaments" meant "heritable property." Further, in *Re Gosselin* [1906] 1 Ch. 120, Farwell, J., was of the opinion that the word "would seem naturally to mean 'things capable of being inherited'" and, following the decision of Lindley, L.J., in *Re Duke of Cleveland's Settled Estates* [1893] 3 Ch. 244, his lordship found that its meaning was sufficiently wide to include money held in trust for investment in land. "All hereditaments" has been held to include hereditaments both above and below the surface (*Metropolitan Railway Co.* v. *Fowler* [1893] A.C. 416) and in varying contexts it has been decided that the word includes arrears of payments due to a chapel clerk by immemorial custom (*Stephenson* v. *Raine* (1853), 2 E. & B. 744), land, both leasehold and freehold (*Tomkins* v. *Jones* (1899), 22 Q.B.D. 599) and easements authorised by a special Act (*Great Western Railway Co.* v. *Swindon and Cheltenham Extension Railway Co.* (1884), 9 App. Cas. 787) but not otherwise (*Chelsea Waterworks* v. *Bowley* (1851), 17 Q.B. 358). In considering the meaning of the phrase "messuages, lands, tenements and hereditaments of any tenure" as found in s. 3 of the Lands Clauses Consolidation Act, 1845, in the case of *Pinchin* v. *London and Blackwall Railway Co.* (1854), 24 L.J. Ch. 417, Lord Cranworth, C., found that "a hereditament there means a corporeal hereditament: a hereditament which may be the subject of a tenure, which a right of way cannot be. Therefore, it appears to me that, looking at the narrow view, spelling it out by the interpretation clause, a right of way is not a hereditament within the Act." Apart from statute, Blackstone seems to have held the opposite view (see Commentaries, vol. ii, c. iii).

"Hereditament" has, however, been found to include a rent charge (*Fulward* v. *Ward* (1595), Pop. 86), and in *Hooper* v. *Clark* (1867), L.R. 2 Q.B. 200, Blackburn, J., said that "the right granted to the defendant is to shoot, kill, and take game, which is a creation of an incorporeal hereditament."

Numerous statutes, e.g., the Rating and Valuation Act, 1925, the Settled Land Act, 1925, the Trustee Act, 1925, the County Courts Act, 1934, the War Damage Act, 1943, and the Local Government Act, 1948, provide their own definitions of this term for their own purposes.

D. G. C.

UNSEAWORTHINESS AND SHIP CLASSIFICATION CERTIFICATES

THE recent case of *Riverstone Meat Co. Pty., Ltd.* v. *Lancashire Shipping Co., Ltd.* [1958] 3 W.L.R. 482; *ante*, p. 656, is an important addition to the list of authorities concerning the sufficiency of a Lloyd's certificate or the certificate of a similar ship classification society to enable a carrier to discharge the burden of proving that he has exercised due diligence to make his ship seaworthy. The reported cases have related principally to the Australian Sea-Carriage of Goods Act, 1924, an enactment similar in terms to our own Carriage of Goods by Sea Act, 1924. Article III, r. 1, of the Schedule to the latter Act provides: "The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—(*a*) make the ship seaworthy."

In *W. Angliss & Co. (Australia) Pty., Ltd.* v. *Peninsular and Oriental Steam Navigation Co.* [1927] 2 K.B. 456, a cargo of lamb on arrival at the port of discharge was found to be damaged by oil taint, and the question arose as to whether the carriers had exercised due diligence to make the ship seaworthy within the requirements of art. III, r.1, of the Australian Act of 1924. Wright, J., held that they had discharged the burden of proof by employing competent naval architects and surveyors, who had surveyed the ship and exercised due care in her building, to see that she was seaworthy, and before the cargo was loaded they had surveyed her and found her apparently seaworthy, although in fact bad workmanship in riveting caused a bulkhead to leak. This bad workmanship, however, could not have been detected by reasonable care on the part of the carrier's inspector. For the present purpose the decision is interesting because the learned judge, in considering the responsibility of a carrier, observed (at p. 461): "He is to be liable for all such duties as appertain to a prudent and careful carrier acting as such by the servants and agents in his employment. If he has a new vessel built, he will be liable if he fails to engage builders of repute and to adopt all reasonable precautions. He may be held bound to require, for instance, the builders to satisfy one of the well-known classification societies such as Lloyd's . . . In the same way, if he buys a ship, he may be required to show that he has taken appropriate steps to satisfy himself by appropriate surveys and inspections that the ship is fit for the service in which he puts her. But I do not think in any case that the carrier can be held guilty of want of due diligence simply because the builders' employees have put in some bad work which, though concealed, renders the vessel unfit."

His lordship then went on to say that, if the carrier's inspector negligently passed bad work, which he saw or even perhaps which he ought to have seen, the carrier would be liable for want of due diligence on the part of one to whom he had delegated the task of inspecting the work, although such supervision, it might be, could not be other than general or go to every detail of the workmanship. Further, if the naval architect whom he employed to supervise the design, applying current standards, failed to detect a definite error in design, the carrier might perhaps be held liable. But the learned judge made an important qualification, for he observed (at p. 462): ". . . although I do not think that he would be so liable for an error on the part of one of the classification societies such as Lloyd's which occupy a public and quasi-judicial position."

However, in two subsequent cases in the House of Lords—*Wilsons & Clyde Coal Co.* v. *English* [1938] A.C. 57, at p. 80, and *Northumbrian Shipping Co.* v. *Timm* [1939] A.C. 397, at p. 403—the learned judge expressed views which are apparently inconsistent with what he said in the *Angliss* case as to the duty of an employer to appoint competent contractors.

Going behind the certificate

A different ground for the acceptance of the sufficiency of a certificate of the Lloyd's Register surveyor was put forward by Devlin, J., in *Waddle* v. *Wallsend Shipping Co., Ltd.* [1952] 2 Lloyd's Rep. 105, which concerned the claim of a widow of a member of the crew of a vessel that disappeared without trace that her husband's death was due to the owners' failure to provide a seaworthy ship. It was proved that they had employed competent shipbuilders under the survey of a classification society, although in fact an error of design had caused the loss. In the course of his judgment his lordship observed (at p. 130): "But I have held that in fact it was an error of Lloyd's Register surveyor; and if I am wrong in the general view which I have just expressed, I should hold that the employer was not under a duty to go behind as it were the Lloyd's Register certificate. I say this on the ground that such an inquiry would involve a retrogression beyond the point to which a reasonable employer can be expected to go, rather that upon the ground that the duty of Lloyd's Register surveyor is public or quasi-judicial."

But in the next case to be mentioned the court seems to have gone behind the certificate. Possibly, however, a distinction can be drawn between failure to detect an error in design and failure to notice the necessity for repairs when a survey is carried out, and the case may be explained in this way.

In *Minister of Materials* v. *Wold Steamship Co., Ltd.* [1952] 1 Lloyd's Rep. 485, an exceptions clause in a charterparty provided: "Ship not answerable for losses through . . . any latent defect in the machinery or hull not resulting from want of due diligence by the owners of the ship." The principal question concerned an express warranty of seaworthiness, but although it was not necessary for him so to decide, Sellers, J., considered that in proving due diligence the owners could not rely on a certificate by a Lloyd's Register surveyor that a full inspection of the vessel had been carried out, because there had been a complete failure to inspect an air pipe which had fractured and allowed sea water to enter the hold.

In *Riverstone Meat Co. Pty., Ltd.* v. *Lancashire Shipping Co., Ltd., supra*, sea water entered the hold and damaged the cargo. One of the questions to be decided was whether the ship was unseaworthy in design by reason of the lack of a drain well in the forward part of the hold, as well as in the after end. The vessel with the hold in this condition had remained classified by the classification society ever since she had been converted from an aircraft carrier to a cargo vessel in 1948, having passed through her initial and periodical surveys. McNair, J., found that she was not unseaworthy in design, but even if she were, that was not due to any want of "due diligence" to make her seaworthy within the meaning of art. III, r. 1. He accepted and applied the observation of Devlin, J., in *Waddle* v. *Wallsend Shipping Co., Ltd.*,

supra, that to require a shipowner to go behind the classification society's certificate would involve a retrogression beyond the point to which a reasonable shipowner could be expected to go.

Importance of particular facts

But it is to be observed that in neither the *Riverstone Meat Co.* case, *supra*, nor the *Waddle* case, was the *dictum* of Hilbery, J., in *Cranfield Bros., Ltd.* v. *Tatem Steam Navigation Co., Ltd.* (1939), 64 Ll. L. Rep. 264, cited. In the latter case his lordship observed (at p. 267): "If I may say so, I, of course, respectfully agree that the shipowner does not discharge his duty of exercising due diligence to have his ship seaworthy merely by establishing to the court that she passed her classification survey, or merely by showing to the court that he has appointed someone who by qualification should be a skilled person to examine it; but both these elements are to be considered, in my view, in considering whether the shipowner has exercised due diligence to make the ship seaworthy."

This passage was cited with approval by Willmer, J., in *The Assunzione* [1956] 2 Lloyd's Rep. 469, where he considered that there might be cases in which the court would be justified in concluding that a finding of a classification society surveyor was conclusive to show that an owner had done everything he reasonably could. But there were other cases, of which he was quite satisfied the instant case was one, in which quite the opposite conclusion must be reached. The vessel was thirty-eight years old, and after being stranded in 1942 and laid up until 1946, she had never obtained a full classification certificate, but had traded under a provisional certificate extended from time to time. His lordship said that he entirely agreed with what Devlin, J., had said in the *Waddle* case (at p. 130): "The standard of care depends upon prudent practice in each case," and this sentence seemed to him rightly to bring in the particular facts of the particular case.

Conclusion

To sum up, it may be submitted that as the authorities stand at present the certificate is likely to be accepted as conclusive where the question relates to the duty of an owner buying or building a ship in the first instance, but not so where it relates to his duty as to the day-to-day maintenance and upkeep of his ship.

E. R. H.-I.

PROVISIONAL ADOPTION

In a previous article in this journal (see *ante*, p. 661) we examined the acquisition of parental rights over illegitimate children through legitimation and adoption. Here we propose to consider the position of an illegitimate child who, under the law as it now stands, cannot be brought under parental control by either of these methods. An example will indicate the type of case that we have in mind. Miss Smith, a British subject domiciled in England, gives birth to an illegitimate child, the father being an American serviceman domiciled in New York. Without having adopted the child, Miss Smith marries the father. Prior to the marriage the father possessed none of the recognised rights which entitle a parent to control his child's upbringing, all such rights being vested solely in the mother. Moreover, the marriage does not affect the situation since it will not have operated to legitimate the child. Section 1 of the Legitimacy Act, 1926, is confined to cases in which the father is domiciled in England or Wales at the date of his marriage to the mother. Approaching the problem from the point of view of adoption, the position is equally unsatisfactory. Subsection (1) of s. 1 of the Adoption Act, 1950, only permits applications by persons domiciled in England or Scotland, and in this case both the father and mother of the child are domiciled in New York (a wife acquires her husband's domicile on marriage). It follows that the parents cannot, either jointly or solely, adopt the child in this country. So much for the law to-day.

The Departmental Committee on the Adoption of Children under the chairmanship of Sir Gerald Hurst, which issued its report in September, 1954, took the view that domicile should remain the basis of eligibility to apply for an adoption order since domicile is the basis of the jurisdiction of our courts in matters involving personal status (para. 166). The committee recognised that this recommendation would mean "the continuance of the anomaly that a mother who has lost her domicile by marriage or remarriage is unable to adopt her child in this country" (para. 168).

The Children Act, 1958, which is due to come into operation on 1st April, 1959, retains a domicile test so far as our own domestic adoptions are concerned but introduces a new feature, namely, the "provisional adoption order," which should go a long way towards removing the kind of hardship that we are now considering.

Section 24 (1) of the 1958 Act enables the court to make a provisional adoption order in favour of an applicant who is not domiciled in England or Scotland, provided it is satisfied that the applicant intends to adopt the child under the law of his domicile and desires to remove the infant, either at once or after an interval, from Great Britain for that purpose. Such an order will authorise the child's removal and will give the applicant custody of the child pending his final adoption under the foreign system of law. In England the application may be made in the High Court or in the county court in the jurisdiction of which the infant or the applicant resides but not to the magistrates (see s. 24 (2)). No such order can be made unless, apart from the question of the applicant's domicile, a full adoption order could be made under the 1950 Act. Thus, e.g., the usual consents will have to be obtained or dispensed with before such an order can be made but presumably once a consent has been given it cannot be revoked after the order has been made even if the child is still in this country. This appears to follow from s. 24 (4), which provides that, with certain qualifications relating to the devolution of property and the acquisition of citizenship, a provisonal adoption order is to have the same legal consequences as a full adoption order made under the 1950 Act. Apart from preventing the natural parents revoking their consents, this will ensure that the applicants (assuming a joint application by husband and wife) will acquire the same rights in relation to the child's custody and upbringing as those possessed by ordinary parents (see s. 10 of the 1950 Act).

It is the last-mentioned point which is of particular interest here, since if the mother and father in our hypothetical case are likely to remain in this country for some time they may desire to take immediate action to improve the father's legal position in relation to their child. A provisional adoption order will do this for them.

D. L. B.

Common Law Commentary

COMPANY'S ACKNOWLEDGMENT OF STATUTE-BARRED DEBT

A COMPANY is at a disadvantage compared with an individual trader when it comes to the question of pleading the Limitation Act in respect of debts of old standing, by virtue of the decision holding that a statement in a balance sheet that the company owes a specific sum, issued to the creditor signed by or on behalf of the company, will be regarded as an acknowledgment within ss. 23 and 24 of the Limitation Act, 1939 (*In re Coliseum (Barrow), Ltd.* [1930] 2 Ch. 44). Thus, if money is owing to a shareholder, the issue to him of annual accounts showing (as they must) the outstanding liabilities, including the liability to the shareholder, will keep the debt alive so long as the accounts continue to be issued and supplied to the creditor.

There are, however, some modifications of this rule: in the first place, the accounts will not act as acknowledgments in favour of any signatory of the accounts, and, secondly, the person signing a document which would otherwise be an acknowledgment must be an authorised agent of the company.

Both these points are confirmed in the recent decision of *In re Transplanters (Holding Company), Ltd.* [1958] 1 W.L.R. 822; *ante*, p. 547. The company was in compulsory liquidation and the proof in question was put in by the applicant, who was one of two directors of the company, in respect of a loan by him of nearly £40,000. The proof was rejected by the liquidator on the ground that it was statute-barred, but the applicant contended that there was a sufficient acknowledgment of the debt because it appeared among the loans to the company in two balance sheets. These balance sheets were signed by the applicant and the other director and, further, they were certified by the company's auditors.

Promise or acknowledgment to oneself

Wynn Parry, J., on the evidence, stated that the applicant's case must succeed or fail according to the correct view as to the two balance sheets, although other documents were also looked at. His lordship was satisfied that the balance sheets contained a sufficient indication on the face of them of the amount owing to the applicant. But the applicant was a signatory and as a director he was an interested party. The same point arose in the *Coliseum* case where Maugham, J., said: "The difficulty in the present case is that the promise, if any, is a promise by the board of directors, as a board acting on behalf of the company, to pay to themselves the amount of the directors' fees, and it seems to me that this is not, in the circumstances, a promise to pay on behalf of the company. Having regard to the position which a director, as agent of the company, necessarily occupies in relation to the company, it would not have been competent to the board, acting as a board, to authorise the giving of a definite promise to pay to themselves."

The reference to the giving of a promise arises from the interpretation of the Statute of Limitation of 1623. Now, under the Limitation Act, 1939, a promise is not an essential: an acknowledgment in writing or a part-payment are by themselves sufficient to revive the cause of action or to give it a new date from which the six-year period is to be calculated. In *Ledingham* v. *Bermejo Estancia Co., Ltd.* [1947] 1 All E.R. 749 it was decided that the same principle applied to acknowledgments by an interested party as applies to a promise by such a party: ". . . if a trustee cannot rely on a promise to himself, it would be difficult to say he could rely on an acknowledgment which he makes to himself," it was said in that case.

Auditors' certificate not binding on company

The second point taken in the *Transplanters* case was that the balance sheets which contained the references to the loan had a certificate in each case by the auditors certifying the correctness of the contents of the balance sheets. The point arose from the decision in *Jones* v. *Bellgrove Properties, Ltd.* [1949] 2 K.B. 700, where a balance sheet was presented to the shareholders at an annual general meeting of the company which was signed by chartered accountants described as agents of the company, and by two directors, containing the statement: "To sundry creditors £7,638 8s. 10d.," and the plaintiff attended the meeting as a shareholder. The plaintiff was owed a sum of £1,800, the balance of moneys lent to the company by him. He relied on that statement in the balance sheet as an acknowledgment and his claim was upheld by Birkett, J., and the Court of Appeal; Birkett, J., on the basis that "the balance sheet contained an acknowledgment to the plaintiff, in writing, signed by the agents of the company," and Lord Goddard in the Court of Appeal on the basis that the accounts were presented to the annual general meeting at which the plaintiff was present as a shareholder and those accounts were signed by the company's accountants as agents for the company, and by two directors.

That basis for *Jones* v. *Bellgrove* is not a support for the *Transplanters* case because it is one thing to have accounts signed by accountants as agents for the company and another thing to have an auditors' certificate certifying accounts for correctness. It does not follow that, in the case of the certificate, the accountants are acting in a way that may be regarded as an acknowledgment of the debts as agents of the company. Their signatures were put on the certificate as auditors, and Wynn Parry, J., decided that auditors are not agents of the company, at any rate not agents for the purpose of being able to bind the company by merely signing the normal certificate at the foot of the balance sheet, unless there were some special contract to the contrary. That view was come to after considering the duties of auditors as laid down in the Companies Act, 1948 (s. 162).

Companies and the Limitation Act

Whether the accounts of a company should on principle be taken as an acknowledgment so as to prevent a company's relying on the Limitation Act depends on more than one consideration. There would appear to be at least two reasons for the principle of limitation: one is that of the difficulty of providing evidence about a matter arising many years earlier, and the other is that there comes a time when, even though it may be clear that money is owing from one person to another, it is too ancient an affair to be pressed home, i.e., it is to be regarded as of historical rather than active interest. The first reason is one which is not likely to press so hard on a company with regularly audited accounts as it might on a private individual. The second reason is one which may concern a company as much as an individual, but it would hardly be practical to separate one reason from another as grounds for allowing this defence. But even as the law stands it is only in a limited field that this defence is denied to a company.

L. W. M.

Landlord and Tenant Notebook

SECURITY LOST BY CHANGE OF USER

PARLIAMENT has done much to confer security of tenure on the holders of tenancies of various kinds—residential, agricultural and business. It is of some interest to consider in what circumstances the protection will be lost by a change of user; for it is only in the case of business tenancies that express provision has been made for such an eventuality.

Dwellings

The Increase of Rent, etc., Restrictions Act, 1920, applied "to a house or part of a house let as a separate dwelling . . ." (s. 12 (2)), and it has never been suggested that, once the test was passed, a change of user could affect status during the actual term. But security of tenure is conferred by s. 15 (1) on "a tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies"—which says nothing about use of the dwelling-house as a dwelling-house. And there is nothing, as Tucker, L.J., said in *Robson* v. *Headland* (1948), 64 T.L.R. 596 (C.A.), in the actual language of the Rent Restrictions Acts, read literally, to deprive a tenant in legal possession of premises of the protection of those Acts by reason of non-residence.

Judicial interpretation, however, limited the protection. In 1931 Scrutton, L.J., said in *Skinner* v. *Geary* [1931] 2 K.B. 546 (C.A.): "The right of the statutory tenant is a purely personal right to occupy the house *as his home*." Greer, L.J., felt that the court was exceeding its functions, that it was making rather than interpreting law; but the process continued. *Hiller* v. *United Dairies* [1934] 1 K.B. 57 (C.A.) decided, by reference to the principle, that a limited company could not become a statutory tenant; and *Brown* v. *Brash* [1948] 2 K.B. 247 (C.A.) that it applied though the absence from home was involuntary (the tenant had been sentenced to, and was undergoing, imprisonment).

Farms

The Agricultural Holdings Act, 1948, likewise contains no express provision by which it is to cease to apply to premises on their ceasing to satisfy the definition of agricultural holding; and this may well be unnecessary because, in such circumstances, a certificate of bad husbandry would enable the landlord to terminate the tenancy by notice to quit (s. 24 (2) (*c*)). But the definition itself requires, *inter alia*, that the land shall be "land used for agriculture" (s. 1 (2)), not merely *let as* a farm (the method adopted by the Increase of Rent, etc., Restrictions Act). So there seems no reason why, if any tenant farmer did actually abandon farming and use the land for other or for no purposes, the provisions of the Act relating to, say, distress (ss. 18–20) should not cease to apply, and the tenancy, if periodic, be determinable by a common-law notice. That is, unless the tenant were able to lay claim to protection conferred by some other statute; of which more later.

Business premises

Part II of the Landlord and Tenant Act, 1954, does make express provision for a change of use. First, the Part applies to "any tenancy where the property comprised in the tenancy is or includes premises which are *occupied* by the tenant and so occupied *for the purposes* of a business carried on by him or for those and other purposes" (s. 23 (1)). And then when the security of tenure has been conferred by s. 24 (1) ("shall not come to an end unless . . ."), subs. (3) provides: "Notwithstanding anything in subs. (1) of this section—(*a*) where a tenancy to which this Part of this Act applies *ceases to be such a tenancy*, it shall not come to an end by reason only of the cesser, but if it was granted for a term of years certain and has been continued by subs. (1) of this section then . . . it may be terminated by not less than three nor more than six months' notice in writing given by the landlord to the tenant; (*b*) where, *at a time when a tenancy is not* one to which this Part of this Act applies, the landlord gives notice to quit, the operation of the notice shall not be affected by reason that the tenancy becomes one to which this Part of this Act applies after the giving of the notice." The second paragraph may or may not have been actually inspired by the Scots Rent Act decision in *Alexander Cowan & Sons, Ltd.* v. *Acton* [1952] S.C. 73, in which a protected contractual tenant hastily resumed occupation before a notice to quit expired, the reasoning implying that a statutory tenant could not cease to reside and, by returning to the dwelling-house, claim that he was retaining possession by virtue of the Rent Acts.

No dual protection

Though dual nationality is a recognised phenomenon, the Legislature has always been at pains to ensure that a tenant cannot claim more than one kind of protection at a time. But he may, on losing security of tenure conferred by one statute, be able to qualify for security under another.

Thus, as the Rent Acts applied to combined premises—business and residential: see the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (2), proviso (ii), and the Rent, etc., Restrictions Act, 1939, s. 3 (3), and also the recent and startling illustration afforded by *British Land Co., Ltd.* v. *Herbert Silver* (*Menswear*), *Ltd.* [1958] 2 W.L.R. 580; *ante*, p. 230 (C.A.)—the Landlord and Tenant Act, 1954, s. 43 (1) (*a*) and (*c*) excluded from the operation of Pt. II tenancies of agricultural holdings and tenancies comprising properties protected by the Rent Acts respectively. In the latter case, the effect of decontrol brought about by the Rent Act, 1957, was automatically to transfer a decontrolled tenancy of combined premises to the protection of Pt. II of the Landlord and Tenant Act, 1954; suspended animation ceased to be suspended; deprived of one suit of armour, the tenant was promptly issued with another, which might fit him better or worse. And the Rent Act, 1957, Sched. IV, para. 2 (6), ensured that the fifteen months' period of grace provisions did not apply, while para. 11 anticipated any argument to the effect that a statutory tenancy, not being a tenancy at all (*Carter* v. *S.U. Carburetter Co.* [1942] 2 K.B. 288 (C.A.)), did not receive business tenancy protection.

Farmers and Pt. II of the Landlord and Tenant Act, 1954

Could or can a tenant farmer ever claim the protection of Pt. II of the Act of 1954? Section 43 (1) (*a*), as mentioned, excludes tenancies of agricultural holdings; but by s. 69 (1) "agricultural holding" has the same meaning as in the Agricultural Holdings Act, 1948—and this does not necessarily cover any tenancy of agricultural land. Besides the "used

for agriculture" requirement mentioned earlier, there are the requirements that the land be comprised in a contract of tenancy and that it be not let to the tenant during his continuance in any office, appointment or employment held under the landlord (Agricultural Holdings Act, 1948, s. 1 (1)). And s. 94 (1) of that Act defines a contract of tenancy as "a letting of land . . . for a term of years or from year to year."

Taking s. 1 (1) of the 1948 Act by itself, it might be possible to argue that a letting of agricultural land for, say, eighteen months would be outside the scope of the Act (support being found in s. 3, which limits the restrictions on notice to quit to tenancies for a term of two years or upwards). And the suggestion has been made that such a tenant might claim the benefit of the Landlord and Tenant Act, 1954, Pt. II, accordingly.

The suggestion, however, ignored the provisions of the Agricultural Holdings Act, 1948, s. 2, by which when land is "let to a person *for use as* agricultural land for an interest less than a tenancy from year to year, or a person is granted a licence to occupy land *for use as* agricultural land, and *the circumstances are such* that if his interest were a tenancy from year to year he would in respect of that land be a tenant of an agricultural holding, then, unless the letting or grant was approved by the Minister before the agreement was entered into, the agreement shall have effect, with the necessary modifications, as if it were an agreement for the letting of the land for a tenancy from year to year. Provided that this subsection shall not have effect in relation to an agreement for the letting of land, or the granting of a licence to occupy land, made . . . in contemplation of the use of the land only for grazing or mowing during some specified period of the year, or to an agreement for the letting of land, or the granting of a licence to occupy land, by a person whose interest in the land is less than a tenancy from year to year and has not by virtue of this section taken effect as such a tenancy."

And now the last of the "Minor and Consequential Amendments" made by the Agriculture Act, 1958 (Sched. I, para. 29) provides that the Landlord and Tenant Act, 1954, s. 43 (1) (*a*), shall have effect, and be deemed *always to have had effect*, as if at the end of that paragraph there were inserted the words "or a tenancy which would be a tenancy of an agricultural holding if the *proviso* to the Agricultural Holdings Act, 1948, s. 2 (1), did not have effect or, in a case where the *approval* of the Minister of Agriculture, Food and Fisheries was given as mentioned in the said subs. (1), if that approval had not been given."

Which shows that Parliament is anxious not to let any tenancy of agricultural land qualify for security of tenure under Pt. II of the 1954 Act. The object of s. 2 of the Act of 1948, it is well known, was to prevent avoidance or evasion of the security of tenure and compensation provisions by the grant of a shorter tenancy than a tenancy from year to year (in *Land Settlement Association, Ltd.* v. *Carr* [1944] 1 K.B. 657 (C.A.) a 364-days tenancy had been held to be outside the scope of the Agricultural Holdings Act, 1923). And the amendment seeks to make it clear that neither such a tenancy, nor one which might have taken effect as a yearly tenancy, is to qualify the tenant for business tenancy protection.

R. B.

HERE AND THERE

READY TO START

By the time this gets into print the Long Vacation will be over and the law's New Year's Day will have been celebrated in due form. At Cathedral and Abbey, judges, barristers and solicitors will have invoked God's blessing on their work. The distinguished and the fortunate will have enjoyed the Lord Chancellor's hospitality in the Palace of Westminster. Blazing in the unaccustomed lustre of scarlet and ermine and gold-laced robes, the judges of England in review order will have paraded in solemn single file through the Central Hall of the Law Courts to give the privileged chair-allotted spectators there their annual vision of the massed majesty of British justice. The profession and the public will have begun to adjust themselves to so great a change in the personality of the head of the Queen's Bench Division and will have passed from speculation and anticipation to practical comparisons. The new Lord Justice and the two new High Court judges in their hastily acquired robes will have opened another chapter of their lives. Ahead of his brethren, thanks to a notable session at the Old Bailey, in which he has played a notable part, Mr. Justice Salmon has grown perceptibly in stature in the public eye by his bold vindication of the law's mission to curb lawless violence. Representatives of the violent have paid him the high compliment of threatening to murder him.

THE CONVIVIAL CRYPT

This is the moment, when Michaelmas Term is at the point of birth, to take a last look round at what has been happening to the Law Courts during the past two months and to those who are not yet aware of it one must report, with what is commonly called nostalgic regret, the most startling changes in the fabric since the place was built. For generations of solicitors, clerks, litigants and connoisseurs of drinking places, the bar in the Law Courts crypt has seemed established for ever in rock-like security, hewn for them in the very midst of the Temple of Themis.

> Souls of lawyers dead and gone,
> What Elysium have ye known,
> Happy field or mossy cavern,
> Sweeter than this cryptic tavern ?

Under the low gothic arches the two great counters stretched almost the full breadth of the central part of the building. Above one's head, through several thicknesses of solid stone, one knew the Chancery Division was droning on, dry as the desert before Moses struck the rock, but here below was that which, poured out for solicitors' clerks and barristers' clerks, could make wilting practices blossom like the rose. Here, conviviality was wedded to a decent, an almost religious, gravity. It was like drinking in the crypt of Canterbury Cathedral, and crypts, indeed, are very good places to drink in. The "Fleece" at Gloucester has a notable crypt with a suitably ecclesiastical aspect, and for a while, in the nineteenth century, the crypt of St. Etheldreda's in Ely Place was a drinking place, of which a verse was written beginning :—

> "The spirits above and the spirits below
> The spirit divine and the spirits of wine."

ALE NOW

Well, all that is over now in the Law Courts and we shall never see its like again. During the vacation, catering has

won a shattering and decisive victory over the casks. Hitherto the eating arrangements at the Law Courts have been curiously primitive and most interesting to students of social observances. In an assortment of strange gloomy apartments and draughty corridors and subterranean chambers, glazed-tiled, which had evidently changed their user at some fairly remote period, meals could somehow or other be procured, not without enormous difficulties for all concerned. Now the caterers have burst their bonds. Walls have been demolished, partitions erected, smart polished wooden floors laid over the stone, vaulting and pillars freshly and brightly pointed, and, in the process, all that was once the bar crypt has been annexed as restaurant and sealed off. A small, bright new bar, scarcely bigger than a couple of railway train compartments, has emerged round the corner, but the massive repose of the crypt, its penumbra and its aura have irretrievably vanished. One effect of this annexation of space is to make the building more of a maze than ever. Hitherto strangers could be directed hereabouts with relative simplicity. "Go straight through the Central Hall and out of it into the drinking bar, then turn left or right" (as the case might be). Now alternative rights of way have had to be devised round unexpected angles and corners. One of them runs through what used to be some sort of a press room where, for several weeks, the last remaining traces of the seductive legs of pin-up beauties, too firmly affixed to the walls to be easily torn off, distracted the explorer. These works of art have now been laboriously scraped off. But in other respects the Law Courts authorities are making more and more use of their wall space as a picture gallery. The exhibition of legal portraiture which has been adorning the staircase leading to the Bar Library has now spread into the corridor leading into Carey Street, where several paintings of seventeenth- and eighteenth-century judges have appeared. It is odd that, though the courts may change and the law may change, the English legal face changes very little.

RICHARD ROE

"THE SOLICITORS' JOURNAL," 2nd OCTOBER, 1858

ON the 2nd October, 1858, THE SOLICITORS' JOURNAL gave the current criminal statistics: "In 1856, 19,437 males and females were committed for trial in England and Wales, 3,713 in Scotland, and 7,099 in Ireland, 14,734 were convicted in England, 2,723 in Scotland and 4,024 in Ireland. As regards England, 1,264 were convicted of offences against the person, 1,787 of offences against property with violence, 10,487 of offences against property without violence, 94 of malicious offences against property, 754 of forgery and currency offences and 345 other offences. The crimes in England where convictions were obtained included 31 murders, 186 shooting and stabbing cases, 78 manslaughters, 61 concealments of birth, 11 unnatural crimes and 27 attempts to commit such unnatural crimes, 45 cases of rape and carnally knowing girls under 10 years of age, 12 cases of abusing girls between 10 and 12 years of age, 71 assaults with intent to ravish, 2 cases of abduction, 82 of bigamy, 271 grievous assaults and 190 common assaults. No unnatural crimes are recorded against Scotland or Ireland in 1856. 14,734 persons were sentenced at the several criminal courts of England and Wales in 1856; 2,721 were sentenced in Scotland and 4,024 in Ireland; 19 executions appear to have taken place in the whole of the United Kingdom in the year 1856; 10,765 males and 641 females were incarcerated as debtors under civil process. . . . Of 113,736 male and female culprits committed in 1856, 1,990 were under 12 years of age, 36,859 between 12 and 21, 33,400 between 21 and 30, 37,835 between 30 and 60, 2,732 of 60 years and upwards. 33·1 per cent. were utterly illiterate, 53·8 per cent. could read or write imperfectly, 5·4 could read and write well and 0·3 were of superior instruction. The average cost of each prisoner in England and Wales (exclusive of convicts and military prisons) was £29 1s. 2d. The expense of the Government convict prisons and hulks in England in 1856–57 was £247,432 . . . 73,240 culprits were before the Metropolitan police magistrates for various offences in 1856."

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the "Points in Practice" Department, "The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted:

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

1958 Act, s. 2—DATE OF INCREASE OF RENT

Q. I act for the landlord of property, the rateable value of which is over £40. Notice in Form S, to take effect on 6th October, 1958, has been served. The rent is at present paid on the first of each month in advance. Pursuant to s. 2 of the 1958 Act my client is able to increase the rent. It appears that the month's rent to be paid on 1st October next would be at the present rate and not calculated at six days at the present rate and twenty-five days at the increased rate, thus resulting in the landlord not obtaining any benefit of the permitted increase in rent until 1st November next. Can you please confirm?

A. In our opinion, the landlord will be entitled to apportioned increased rent. The Act is, perhaps, not as clear on the point as may be desired (cf. article on "Apportionment on Statutory Determination," *ante*, p. 394), but s. 2 (2) does say: ". . . in respect of any rental period *or part of a rental period*," and we consider that the words in italics were intended to, and do, authorise the suggested increase.

1958 Act, s. 3—SUSPENSION OF POSSESSION ORDER—NO PROPOSAL FOR THREE-YEAR TENANCY

Q. Last November a client of ours purchased the lease of certain premises which consisted of a shop on the ground floor and a maisonette on the first and second floors. The premises were sold to our client with vacant possession of the shop but subject to the existing tenancy of the maisonette. The rateable value of the maisonette is £42 and it therefore became decontrolled by virtue of the Rent Act, 1957. Our client purchased the premises on the understanding that he would be entitled to vacant possession of the maisonette on 6th October, 1958, and the purchase price was undoubtedly fixed on this basis. Our client purchased the premises for his business of a ladies' hairdresser and he requires possession of the maisonette for one of his assistants. He is not actually

bound by any agreement in writing. The statutory notice giving the tenant six months' notice to determine the tenancy of the maisonette was given to expire on 6th October, 1958, but since then the Landlord and Tenant (Temporary Provisions) Act, 1958, has been passed, which prevents the landlord from obtaining possession without an order of the court, and an occupier may apply for suspension of a possession order on certain grounds, one of which is that he has not unreasonably refused or failed to accept any proposal made by the owner for a new tenancy for not less than three years. As no proposal or offer of a new tenancy has been made in this case it is assumed that an application by the occupier for suspension of an order for possession would succeed on the ground that the occupier cannot be said to have unreasonably refused to accept any offer of a new tenancy. It occurs to us, however, that it might possibly help our client's case if he would be willing to risk putting forward an offer of a new tenancy for three years at an increased rent in the hope that the occupier would not accept. The occupier has been in occupation since 1941 and is paying a low rent, so that the increase would have to be quite substantial and it is conceivable that the occupier might not be willing or able to pay a big increase.

A. In our opinion the fact that no offer of, or proposal for, a new tenancy of not less than three years had been made at all would not in itself entitle the tenant of the maisonette to suspension of an order for possession. It would merely mean that he would have to prove three things (failure to obtain appropriate accommodation; rent paid; greater hardship) instead of four; if he failed to establish *any* of those things he would not obtain relief. So we consider that, if the suggested offer were made, a refusal might or might not be considered unreasonable; but, after refusal, the defendant tenant would still have to surmount the other obstacles, and the desire of the plaintiff to accommodate an assistant would be *a* factor when it came to hardship. Whereas, if the offer were accepted, the assistant could not be accommodated. The considerations have to be balanced in the light of knowledge of the tenant's circumstances and availability of other " appropriate accommodation," but in our view the client would not prejudice his case by not making any such proposal as is suggested.

Apportionment of Gross and Rateable Values

Q. A large house (not in London) with gross value at £75 and rateable value at £60 is let in four flats, one of which is occupied by the landlord. Prior to revaluation the flats were all separately assessed and it is believed they were all then under the £30 rateable value figure. The rents (inclusive of rates) were all controlled and there had been various adjustments from time to time as rates rose and fell and it is not now possible to find out the old net rent figure. According to the landlord's proposals for apportioning the gross value of £75 between the four flats, a new value for the flats based on twice the (apportioned) gross value *plus* agreed share of rates would appear to be some 5s. or so *less* than the old controlled rent.

(*a*) Would the tenants be able to ask for the rents to be reduced or must they continue to pay the former controlled rent? On p. 29 of the *Daily Mail Guide to the New Rent Act* it is stated that a tenant who is already lawfully having to pay more than the new rent limit is not entitled to have his rent reduced. Is this a correct statement of the law and can you refer us to the relevant part of the Rent Act for it?

(*b*) In addition to the landlord apportioning the gross value by agreement with the tenants, should he also apportion the rateable value for each flat by agreement? The reason we ask this is because apportionment of the gross value between the flats might give figures for rateable values which do not necessarily total the new rateable value for the whole house.

	Landlord's suggested apportionment of gross and rateable values		*Actual rateable value based on gross value apportionment*
2nd floor ..	18	15	11
1st floor ..	21	16	14
Ground floor ..	21	16	14
Basement ..	15	13	8
	75	60	47

The third column is the figure for rateable values based on the suggested apportionment of the gross value (of £75 on the whole house) in the first column, which differs from the rateable values in the second column, which are the landlord's suggested apportionment of the rateable value of £60 on the whole house.

(*c*) What notice (if any) will the landlord be required to serve on the tenants to adjust their rents in the event of rise of rates so that he can pass on to the tenants the increased rates he is paying? Will the landlord be permitted to pass on to the tenants such rate increases notwithstanding the fact that the recoverable rent is in excess of the rent calculated under the 1957 Act?

A. (*a*) The statement of law contained in the *Daily Mail Guide* on the point referred to is correct. This is the effect of s. 1 (3) of the Rent Act, 1957, which states that where at the commencement of the Act the recoverable rent exceeds the rent limit as calculated under that Act then for the purposes of the Act that higher rent is the rent limit.

(*b*) In our opinion, it is necessary to apportion both gross and rateable values (in the same proportion), as relating the rateable values to the apportioned gross values according to the statutable deductions will, as the examples show, give an aggregate figure of less than the true rateable value for the whole house (see answer given at p. 194, *ante*, and *The Rent Act in Practice*, pp. 9 and 10, Nos. 15 and 16).

(*c*) The power of the landlord to pass on increases in rates above the amount payable at the commencement of the Act is reserved by s. 1 (3). Notice to increase the rent on account of an increase in rates must be in Form B in Sched. I to the Rent Restrictions Regulations, 1957. This notice cannot affect rental periods beginning more than six weeks before it was served (s. 3 (2)).

Reduction of Gross Value—Recovery of Overpaid Rent

Q. On 7th November, 1956, the gross value of a dwelling-house in the valuation list was £37. By a proposal made on 3rd January, 1957, and settled on 15th May, 1958, the gross value was altered to £35 with effect from 1st April, 1956. The local authority has given the landlord credit for the overpayment of rates since the latter date. The rent has been paid hitherto up to the rent limit calculated by reference to a gross value of £37. Applying the Rent Act, 1957, Sched. V, Pt. II, para. 6, the 1956 gross value for any rental period is to be £35. There has thus been an overpayment. The whole of the overpayment would be recoverable under the Act of 1923, s. 8, but it seems this may be affected by the 1957 Act, Sched. II, para. 4. Is the effect of these two provisions that the overpayment can be recovered in full only from six weeks before the settlement and previously thereto only to the extent of the net rent?

A. In our opinion the rent for the rental periods since the increase became effective must be calculated by multiplying the new gross value of £35 by two (Sched. V, paras. 6 and 16), plus rates, but the rates will be calculated on the original rateable value up to a period of six weeks before the proposal was settled and thereafter on the amended rateable value (Sched. II, para. 4). Consequently, in so far as the overpayments are as a result of the rent being calculated on a gross value of £37, the whole of them will be recoverable but in so far as they were in respect of rates they will only be recoverable up to a period of six weeks before the proposal was settled.

SOCIETY OF PUBLIC TEACHERS OF LAW

The Annual Meeting of the SOCIETY OF PUBLIC TEACHERS OF LAW was held on 18th–20th September in the University of Cambridge under the Presidency of Professor P. W. Duff. In his Presidential Address, which opened the Meeting, Professor Duff reminded members that this was the Society's Jubilee Year—it had been formed in the autumn of 1908 though the first meeting was not held until the following year. He paid tribute to the Society's founding fathers and in particular to the late Dr. Edward Jenks, who was the prime mover. Professor Duff felt that Dr. Jenks and the other distinguished teachers that he had goaded into action would be proud if they knew what the Society had accomplished in its first fifty years and would be surprised and gratified at the position which it now held in the legal world. Not only was it consulted by the professional bodies on questions relating to legal training, but at the last meeting the Lord Chancellor himself had travelled to Belfast to pay tribute to the work of law teachers on the Law Revision and Law Reform Committees and to appeal to them to suggest further projects of law reform. The Society had responded by submitting a memorandum urging the need for a Standing Committee to consider the reform of criminal law, with special reference, in the first instance, to the law of larceny. He had reason to hope that this suggestion would shortly bear fruit. Having thus embarked on a career of crime, the General Committee had decided that addresses at the present meeting should concentrate on criminal law topics.

On Friday, 19th September, the Honourable Mr. Justice Devlin delivered an address on Statutory Offences. He argued that the so-called "minor" statutory offences were of considerable importance and interest and urged academic lawyers to devote more attention to them. The courts had been left by the Legislature with very little guidance on the question of how far *mens rea* was to be an ingredient in such offences. Judges had solved this question empirically, but there was real need for works of academic scholarship which would extract principles from the discussions and provide clearer guidance.

Following afternoon excursions to Sawston Hall (a Tudor mansion with legal associations which had been the home of the Huddleston family for at least four centuries) and to the factories of Messrs. Pye, Ltd., over 200 members and their wives (a record attendance) enjoyed the Society's Annual Dinner in the Hall of Trinity College.

On Saturday morning, Dr. Glanville Williams addressed the Society on "The Reform of the Criminal Law and its Administration." He began by welcoming the possibility that a Criminal Law Committee might be set up to exercise a permanent supervision over the machinery of the criminal law. He hoped that the work of the committee might lead it eventually to a codification of the law, and that it would not merely consider reforms in principle, but have a research staff capable of doing immensely careful work in point of detail.

Much of the work of the committee would be of a technical character, such as the simplification of the law relating to acquisitive offences. Whereas the heterogeneous offences of acquisition need to be unified, the amorphous crime of manslaughter as we have it in the present law needs to be sub-divided into crimes with separate names, in order that precision may be given to the charge and conviction. Many statutory crimes could be generalised and simplified. The committee could do useful work in proposing the repeal of obsolete legislation, and the abolition or at least reduction of local criminal law.

In some respects, the speaker continued, the criminal law needs extension in order to further the policy implicit in the present law. For example, we need a general offence of being drunk and dangerous, conviction for which should initiate some effort at treatment. There should be a new offence of indecency with boys and girls under sixteen years of age, and the law relating to attempted crime should be extended by the abolition of the "proximity" rule. In other ways, however, the criminal law needs restriction, and this is perhaps more difficult to secure than is the creation of new offences. The maxim *Nulla pœna sine lege* should be given effect by defining the crime of conspiracy and the power to bind over. Absolute responsibility should be removed from the criminal law, or at least such offences be "destigmatised" by more plainly separating them from the traditional crimes requiring *mens rea*. The theory of corporate responsibility should be reconsidered.

Dr. Williams thought that there would be a long struggle before the law is completely freed from the religious ideas of an earlier age, and in this connection he discussed such crimes as attempted suicide, homosexuality, bestiality, incest, bigamy and abortion.

Turning to matters of procedure, no better illustration could be given of the confusion now prevailing than the law of arrest; and here, again, there is the objectionable "local criminal law." There is urgent need of a new inquiry into our mode of ascertaining facts. It should be, but is not, a truism in legal proceedings that the best evidence is the freshest evidence. In this connection, Dr. Williams advocated the use of tape recorders by the police in taking the statements of witnesses. In order to expedite trial, he suggested the abolition of the preliminary inquiry unless it were demanded by the prosecution or the defence, and the creation of a system of regional criminal courts in virtually permanent session. He also considered ways of improving identification parades.

The speaker then passed to a criticism of the theatrical nature of the English trial, and pointed out that there was a particularly strong body of opinion in favour of a number of procedural reforms where a child is the victim of a sexual offence. The law of evidence has remained almost wholly free from investigation and reform, the rule against hearsay being one of those most needing attention. The presumption of innocence is improperly displaced by many statutes, which do not draw proper distinction between shifting the persuasive burden of proof and shifting the evidential burden. In conclusion, Dr. Williams surveyed some of the lines of advance that might be made in matters of punishment and treatment.

At the subsequent business meeting, Professor H. G. Hanbury, Vinerian Professor of English Law in the University of Oxford, was elected President and Professor F. H. Lawson, Professor of Comparative Law in that University, Vice-President, for the year 1958–59. Mr. Trevor C. Thomas, Professor L. C. B. Gower and Mr. K. Howard Drake were re-elected as Honorary Treasurer, Honorary Secretary and Honorary Assistant Secretary, respectively.

OBITUARY

MR. H. M. ARTHUR

Mr. Harold Morgan Arthur, solicitor, of Machynlleth, died on 13th September, aged 54. He was admitted in 1931 and was clerk to the magistrates of Machynlleth and Towyn.

MR. H. BAWDEN

Mr. Herbert Bawden, solicitor, of Wimbledon, died on 24th September, aged 82. He was admitted in 1928.

MR. S. BORRIE

Mr. Stanley Borrie, solicitor, of Chancery Lane, managing director of Messrs. Jordan & Sons, Ltd., until his retirement last March, died on 21st September, He was admitted in 1912.

MR. E. E. MORGAN

Mr. Eric Elton Morgan, solicitor, of Shrewsbury, died on 24th September, aged 58. He was a member of the Council of The Law Society and a member of the Birmingham and West Midlands Area Legal Aid Committee. He was until recently Deputy Coroner for Shrewsbury. He was admitted in 1923.

MR. G. OKELL

Mr. George Okell, solicitor, of Ross-on-Wye, has died aged 84. He was a past president of the Herefordshire, Breconshire and Radnorshire Incorporated Law Society, and clerk to the Commissioners of Taxes for the Ross division for more than thirty years. He was admitted in 1899.

BOOKS RECEIVED

Summary of Hire-Purchase and Credit Sale Restrictions affecting agreements made on or after 16th September, 1958. (Oyez Table No. 4.) Third Edition. 1958. London: The Solicitors' Law Stationery Society, Ltd. 1s. 6d. net.

Key to Income Tax and Sur-tax—Finance Act Edition. Forty-sixth Edition. Edited by PERCY F. HUGHES. pp. 223. 1958. London: Taxation Publishing Co., Ltd. 10s. net.

The Common Law of Mankind. By C. WILFRED JENKS, LL.D. Cantab., of Gray's Inn, Barrister-at-Law. pp. xxvi and (with Index) 456. Published under the auspices of the London Institute of World Affairs. 1958. London: Stevens & Sons, Ltd. £3 3s. net.

John Philpot Curran—His Life and Times. By LESLIE HALE, M.P. pp. (with Index) 287. 1958. London: Jonathan Cape, Ltd. £1 5s. net.

The Rent Act up to Date. By R. B. ORANGE, M.A. (Oxon). pp. 48. 1958. London: Associated Newspapers, Ltd. 2s. net.

Best Murder Cases. Edited by DONN RUSSELL. pp. 272. 1958. London: Faber & Faber. 18s. net.

Suspect Documents—Their Scientific Examination. By WILSON R. HARRISON, M.Sc., Ph.D. pp. viii and (with Index) 583. 1958. London: Sweet & Maxwell, Ltd. £4 4s. net.

Tolley's 1958-59 Synopsis of Taxation in the Republic of Ireland (Eire). Thirty-fourth Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. pp. 14. 1958. London: Chas. H. Tolley & Co. 2s. 6d. net.

Tolley's Income Tax Tables for 1958-59. 1958. London: Chas. H. Tolley & Co. 4s. 6d. net.

Tolley's Income Taxes in the Channel Islands and Isle of Man. Ninth Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. pp. 22. 1958. London: Chas. H. Tolley & Co. 6s. net.

Tolley's Synopsis of Estate Duty. 1958 Edition. Compiled by a Barrister-at-Law. Edited by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. pp. 45. 1958. London: Chas. H. Tolley & Co. 6s. net.

Tolley's Synopsis of Profits Tax. Twenty-second Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. pp. 25. 1958. London: Chas. H. Tolley & Co. 6s. net.

Tolley's Income Tax Chart-Manual 1958-59. Forty-third Edition. Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, F.C.I.S. pp. viii and 127. 1958. London: Chas. H. Tolley & Co. 17s. net.

Key to Profits Tax. Edited by PERCY F. HUGHES. pp. 313. 1958. London: Taxation Publishing Co., Ltd. 12s. net.

Star Chamber Stories. By G. R. ELTON. pp. (with Index) 244. 1958. London: Methuen and Co., Ltd. £1 1s. net.

Cricketers and the Law. By J. W. GOLDMAN. pp. xx and (with Index) 138. 1958. Surrey: J. W. Goldman, Redcot, Vicarage Road, Egham. £3 3s. net.

The Stock Exchange Official Year-Book 1958. Volume II. Editor-in-Chief: Sir HEWITT SKINNER, Bt. pp. cccxlii and 3492. 1958. London: Thomas Skinner & Co. (Publishers), Ltd. Two volumes, £8 net.

Register of Defunct and other Companies removed from the Stock Exchange Official Year-Book. Editor-in-Chief: Sir HEWITT SKINNER, Bt. pp. vi and 526. 1958. London: Thomas Skinner & Co. (Publishers), Ltd. £1 10s. net.

REVIEWS

Protection from Power under English Law. (The Hamlyn Lectures: Ninth Series.) By Lord MACDERMOTT, Lord Chief Justice of Northern Ireland. 1957. London: Stevens and Sons, Ltd. 16s. 6d. net.

This is the ninth of the series of Hamlyn Trust lectures, and reproduces the group of addresses delivered in Belfast last November. Lord MacDermott, in those lectures, examined in turn several concentrations or regions of power, as he called them, which by their weight or their nature conduce to the oppression of the individual, and considered the extent to which the law keeps a just balance between those who wield the power and those who are subject to it.

Few will be found to disagree in principle with the lecturer's justification for undertaking such a review at the present day. "The time has arrived when, in his own interests no less than in those of the nation, the ordinary citizen must become better versed in the purpose and development of the law that rules him." The moral strength of our law is not easy to gauge over a wide area. What his lordship here does, in assessing the law's efficacy as a bulwark against tyranny, is to take "soundings" at particular points. He considers first relationships between subject and State, and secondly, those between groups of subjects in situations where wealth, status, monopoly and restrictive association may lead to oppression. Under the first head, a survey of powers of prosecution is followed by sections on the power of Parliament and of the executive.

The latter topic especially is much on the public mind today. But in the long run may there not be as much for the individual to fear from the less tractable influences of wealth or the sheer power of numbers? It is not the least of the virtues of this series of lectures that they re-introduce perspective into the current view of the problem of persecution.

The concluding paper on the Power of Numbers traces the development of the trade union movement and suggests some possibilities for statutory regulation of its potentiality for abuse.

Marriage, Separation and Divorce. ("This Is the Law" Series). Third Edition. By H. B. GRANT, M.A., of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law. 1957. London: Stevens & Sons, Ltd. 8s. 6d. net.

Having listed the people whom one may not marry, and then, for those who were incautious enough to propose and be accepted, discoursed upon the advantages and risks of a breach of promise action, Mr. Grant goes on to give a "short guide to getting married." We suspect that it is the female section of the population who familiarise themselves rather closely with these rules and regulations, and few males, if questioned, would have the slightest idea as to how they could get themselves married. Perhaps Mr. Grant's "short guide" will be of interest to them in order that they may recognise when they are approaching the irrevocable step.

Having got himself married, the husband will then be told by Mr. Grant of his duty to maintain wife and family, his wife's right to pledge his credit, when he will be guilty of larceny if he takes his wife's property and the result of the use of housekeeping money as stake in a football pool. From this point we hurry through the grounds for separation, divorce or nullity.

Among the useful appendices of Mr. Grant's book which will be of value to those not called upon to master or peruse the usual text-books are: specimen separation orders and separation agreements as well as typical divorce petitions and copies of the documents usually served with a petition.

The book concludes with a useful list of social organisations concerned with marriage, the number of which is a fair commentary upon human frailty and inability to stay the course.

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Abertillery and District Water Board Order, 1958. (S.I. 1958 No. 1563.) 5d.

Additional Import Duties (No. 5) Order, 1958. (S.I. 1958 No. 1564.) 4d.

Aliens (Persons on Military Courses) Direction, 1958. (S.I. 1958 No. 1554.) 4d.

Building (Safety, Health and Welfare) (Amendment) Regulations, 1958. (S.I. 1958 No. 1553.) 6d.

Leicester Water (No. 2) Order, 1958. (S.I. 1958 No. 1562.) 8d.

London Traffic (Parking Places) Consolidation (Amendment) Regulations, 1958. (S.I. 1958 No. 1574.) 6d.

London Traffic (Prescribed Routes) (Hackney) Regulations, 1958. (S.I. 1958 No. 1573.) 4d.

London Traffic (Prohibition of Cycling on Footpaths) (Thurrock) Regulations, 1958. (S.I. 1958 No. 1572.) 4d.

London Traffic (Prohibition of Waiting) (Redhill) Regulations, 1958. (S.I. 1958 No. 1575.) 5d.

North Borneo (Definition of Boundaries) Order in Council, 1958. (S.I. 1958 No. 1517.) 5d.

Register of County Court Judgments (Amendment) Regulations, 1958. (S.I. 1958 No. 1582 (L. 9).) 4d.

These regulations, which came into force on 1st October, extend from twenty-one days to one month the period after which an unsatisfied county court judgment for an amount of £10 or more must be registered.

Stopping up of Highways (County of Buckingham) (No. 11) Order, 1958. (S.I. 1958 No. 1537.) 5d.

Stopping up of Highways (County of Buckingham) (No. 12) Order, 1958. (S.I. 1958 No. 1538.) 5d.

Stopping up of Highways (County of Chester) (No. 11) Order, 1958. (S.I. 1958 No. 1532.) 5d.

Stopping up of Highways (County Borough of Eastbourne) (No. 2) Order, 1958. (S.I. 1958 No. 1556.) 5d.

Stopping up of Highways (County of Gloucester) (No. 14) Order, 1958. (S.I. 1958 No. 1550.) 5d.

Stopping up of Highways (County Borough of Hastings) (No. 1) Order, 1958. (S.I. 1958 No. 1541.) 5d.

Stopping up of Highways (County of Kent) (No. 13) Order, 1958. (S.I. 1958 No. 1544.) 5d

Stopping up of Highways (County of Lancaster) (No. 27) Order, 1958. (S.I. 1958 No. 1545.) 5d.

Stopping up of Highways (County of Leicester) (No. 11) Order, 1958. (S.I. 1958 No. 1546.) 5d.

Stopping up of Highways (London) (No. 37) Order, 1958. (S.I. 1958 No. 1558.) 5d.

Stopping up of Highways (County of Northampton) (No. 7) Order, 1958. (S.I. 1958 No. 1557.) 5d.

Stopping up of Highways (County of Oxford) (No. 8) Order, 1958. (S.I. 1958 No. 1531.) 5d.

Stopping up of Highways (City and County Borough of Plymouth) (No. 4) Order, 1958. (S.I. 1958 No. 1539.) 5d.

Stopping up of Highways (City and County Borough of Sheffield) (No. 6) Order, 1958. (S.I. 1958 No. 1559.) 5d.

Stopping up of Highways (County of Surrey) (No. 6) Order, 1958. (S.I. 1958 No. 1540.) 5d.

Stopping up of Highways (County of Warwick) (No. 4) Order, 1958. (S.I. 1958 No. 1551.) 5d.

Stopping up of Highways (County of Worcester) (No. 13) Order, 1958. (S.I. 1958 No. 1542.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 17) Order, 1958. (S.I. 1958 No. 1543.) 5d.

Tuberculosis (North, West, Central and South Scotland Attested Area) Order, 1958. (S.I. 1958 No. 1555 (S. 70).) 5d.

Tuberculosis (Southern England Attested Area) Order, 1958. (S.I. 1958 No. 1583.) 5d.

Wages Regulation (Sugar Confectionery and Food Preserving) Order, 1958. (S.I. 1958 No. 1565.) 6d.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to approve the appointment of LORD GODDARD as a Knight Grand Cross of the Order of the Bath.

The Queen has conferred a Barony for life upon Sir HUBERT LISTER PARKER, Lord Chief Justice of England, by the name, style and title of Baron Parker of Waddington, of Lincoln's Inn in the Borough of Holborn.

Mr. HARRY SYKES GUYLER, deputy clerk to the Doncaster West Riding Magistrates, has been appointed Magistrates' Clerk, in succession to Mr. E. W. Pettifer, who retires in December.

Mr. EDWIN RONALD MITCHELL has been appointed Registrar of the Penzance and Helston County Courts in succession to the late Mr. B. B. Bennetts.

Mr. ALFRED H. SHAW, formerly chief clerk of Shipley U.D.C., has been appointed deputy Town Clerk of the Borough of Weston-super-Mare.

Mr. CYRIL MONTGOMERY WHITE, Q.C., has been appointed Chairman of the Foreign Compensation Commission in succession to Sir Arthur Comyns Carr, Q.C., who retired on 31st July.

Personal Notes

Mr. John Bullough, solicitor, of Leicester, was married on 19th September, at Leicester, to Miss Dorothy Boshier.

Mr. Brian Jeffrey Chapman, solicitor, of Leicester, was married on 20th September, at Gaddesby, to Miss Elfrida Mary Winton Caven.

Mr. Samuel Maynard, clerk of Chesterfield County Court, was presented by His Honour Sir Henry Braund, on behalf of himself, the registrar and the court staff, with a gold watch on the occasion of his retirement recently.

Miscellaneous

DEVELOPMENT PLAN

SOMERSET DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Somerset. The plan, as approved, will be deposited in the County Hall, Taunton, for inspection by the public.

The trial for murder in 1911 of Steinie Morrison is the subject of the next feature in the series "The Verdict of the Court," in the B.B.C. Home Service, on Tuesday, 7th October, at 8 p.m. Like other famous trials in this series the case has been chosen for an interesting point of law which emerged. The new Criminal Evidence Act permitted the prisoner to give evidence and protected him from cross-examination about his past. Morrison's counsel, by insisting on questioning other witnesses about their past, waived his own client's right to such immunity. Despite the dubious evidence of some prosecution witnesses, Morrison's criminal record probably clinched the case in the jury's mind, though the judge's summing up gave him the benefit of the doubt.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).